

**STATE OF HAWAI‘I
DEPARTMENT OF LAND AND NATURAL RESOURCES
OFFICE OF CONSERVATION AND COASTAL LANDS
Honolulu, Hawai‘i**

May 13, 2011

Board of Land and
Natural Resources
State of Hawai‘i
Honolulu, Hawai‘i

REGARDING: Conservation District Enforcement File (ENF): HA-11-09
Alleged Conservation District Violation for the Unauthorized
Construction of a Hiking Trail, Stairs/Walkway Platform to Support
Commercial Tour Operations

BY: Gary Marrow - Kapohokine Adventures

LANDOWNER: Teresa Prekaski

LOCATION/TMK: Honoli‘i Gulch, North Hilo, Hawai‘i

TMK: (3) 2-7-002:021

SUBZONE: Limited

DESCRIPTION OF AREA:

Honoli‘i Stream is located in the district of North Hilo on the Island of Hawaii. The site of the alleged violation is approximately 2 miles west of the shoreline at Honoli‘i Cove, which is a popular surfing area. Honoli‘i cove is approximately 2 miles from Hilo town.

The unauthorized improvements took place within the Honoli‘i gulch area that surrounds Honoli‘i Stream. The gulch is located within the State Land Use Conservation District, Limited subzone (**Exhibits 1-3**).

CHRONOLOGY OF EVENTS:

On October 11, 2010 DLNR received a letter from Ms. Teresa Prekaski seeking our advice on the creation of a walking path from the top of gulch on her property, down to the river (**Exhibit 4**). On November 11, 2010 the Office of Conservation and Coastal Lands (OCCL) responded to Ms. Prekaski. In the OCCL letter, it was noted that a conservation district use application would be required to create the walking trail (**Exhibit 5**). On November 18, 2010, OCCL received a second letter from Ms. Prekaski indicating that the “trail is actually still in pretty good shape.” The letter went on to indicate that they would only need to remove 600 square feet [presumably vegetation], etc. (**Exhibit 6**). On November 24, 2010, the OCCL wrote back to Ms. Prekaski indicating that a conservation district use application for a Departmental Permit would be

required for the work described in her second letter, and that the work could be considered minor in scope. The OCCL noted that an environmental assessment (EA) would not be required (**Exhibit 7**)¹.

In December 2010, the Department began to receive complaints of unauthorized uses at Honoli'i Stream/gulch. A complainant alleged that a trail had been cut into the property to the Honoli'i Stream and that tourists were using the trail to access the stream where kayaking activity was taking place. On December 22, 2010, several Division of Conservation and Resources (DOCARE) officers attempted to visit the site, but were unsuccessful. One of the officers was able to make telephone contact with Mr. Gary Marrow of Kapohokine Adventures who stated that the property could be visited the following week. It is our understanding that Mr. Marrow leases the property from Ms. Prekaski, and he is the owner of Kapohokine Adventures.

Subsequent to this experience, the DOCARE officers attended a meeting on December 29, 2010 with County of Hawaii personnel and several complainants. During this meeting, photographs and a video were shared and viewed. According to DOCARE, the video provided an excellent indication of the scope of work that had been completed.

Based on this information, the Department issued a Notice of Alleged Violation & Order on December 30, 2010 to Ms. Prekaski (**Exhibit 8**). Shortly thereafter, OCCL staff received a phone call from Mr. Marrow who claimed responsibility for the situation.

On January 14, 2011, DOCARE personnel visited the area in the company of Mr. Marrow. Photographs from that site inspection have been included in this report (**Exhibit 9**). Photographs of the wooden stairway near the bottom of the gulch are also included in this report as well as a photograph of some kayaks tied to a tree near the stream.

ALLEGED UNAUTHORIZED LAND USES:

Staff has reviewed the evidence in this case. It appears that a trail has been constructed from the rim of the Honoli'i Gulch down to the stream. The work appears to have involved vertical and horizontal cuts into the slope of the gulch. It includes the placement of red cinder as well as makeshift railings and steps made out of branches. There is a wooden platform and stairs built with poured concrete near the bottom of the trail. The trail distance appears to be approximately 300-400 feet in length (*estimation by DOCARE officer*). No permits or authorizations have been obtained from the Department for any of the work.

The unauthorized work is in violation of Chapter 183C-7, Hawai'i Revised Statutes (HRS), and Title 13-5-6, Hawai'i Administrative Rules (HAR). Based upon our investigation, OCCL finds that:

1. The location of the trail, Tax Map Key: (3) 2-7-002:021, is in the Conservation District and is classified as *Limited* Subzone;

¹ Staff believes that our advise to Ms. Prekaski in our November 24, 2010 letter is negated by the misleading information on which we based our advise, and that the unauthorized work that has been reported to us by DOCARE and complainants would have required a Board Permit and Environmental Assessment.

2. The work involved the clearing and the grading of the land, and the placement of cinder, wood fences, and stairs;
3. The work appears to have been conducted to support commercial activities;
4. This use requires a Conservation District Use Permit (CDUP) pursuant to Hawai'i Administrative Rules (HAR) §13-5. The closest identified land uses for this use in the Limited subzone would be 13-5-23 (L-2) Botanical Gardens and Private Parks²;
5. This work was not authorized by the Department of Land and Natural Resources under Chapter 183C-7, HR and 13-5-6, HAR.

DISCUSSION:

The stated purpose of the Conservation District law is to protect and conserve natural resources. The section of the law, HRS, Section 183C-7, that refers to enforcement of our conservation laws should have a deterrent effect on the landowner to prevent them from doing or allowing malfeasance within the Conservation District.

Staff has considered the Department's mechanism for the imposition of fines for the unauthorized improvements. Our conservation law, Chapter 183C-7, Hawai'i Revised Statutes (HRS) allows for the imposition of up to a \$15,000 fine per violation, in addition to administrative costs, and costs associated with land or habitat restoration.

The OCCL developed internal guidelines to assist in the prosecution of civil violations (*see attached Penalty Schedule, Exhibit 10*). In accordance with these guidelines, the unauthorized uses identified in this matter would qualify for a fine of between \$10,000-\$15,000 because the use would have required a "Major Permit" from the Board (*see footnote 1*).

OCCL's main concern with this case is the willful nature of the alleged violation. At no time during our correspondence with the landowner was it disclosed that work had already been conducted in the Conservation District. Ms. Prekaski did not disclose information that Kapohokine Adventures constructed the trail. We know that Kapohokine Adventures constructed the trail because of statements made by Mr. Marrow included in the DOCARE report. Witness statements indicate that the trail was constructed to gain access to Honoli'i Stream for commercial tours, and all evidence supports this assertion. The design and durability of the trail indicates that it is intended to be a permanent feature to support heavy foot traffic. In addition, substantial visitor infrastructure has been developed on the adjacent lands (zoned State Land Use Agriculture), to support helicopter landings and tourism, and there are kayaks stored on the property next to the stream in the Conservation District. The infrastructure in the Agricultural District is being developed by Kapohokine Adventures, which is the same entity responsible for construction of the trail (*see Exhibit 9, aerial photograph*). We know this because the County of Hawaii has been investigating Kapohokine Adventures for these uses.

Staff would like to note that Mr. Marrow claims (*statement from DOCARE report*) that that there was an existing trail, and that he does not charge his customers specifically for trail access or kayak tours, and the trail is not used to support commercial activities. While it is possible that

² The Administrative Rules (Title 13-5, HAR) do not provide an explicit reference to commercial trail use within the Limited subzone. The closest identified land use is "Private Parks."

there was an existing trail, it does not negate the fact that the work that was recently conducted in the gulch involved substantial work for which the Department had granted no authorization. Mr. Marrow did submit photographs of an apparent existing trail. Staff has included these photographs in this report (**Exhibit 11**). There is no way to confirm the location of the so-called trail in the photographs because the photographs are not geo-referenced. In any case, staff believes that the work documented by DOCARE is substantial and would have required a major CDUA and environmental assessment (EA) similar to other trail building cases that we have been involved with.

In conclusion, staff believes that there is enough evidence to consider this as a major violation as the use would have required a Board Permit (Major Permit) involving trail building to support a commercial use. The alleged violation appears to be willful in nature and staff believes that there is the potential for substantial environmental harm stemming from unregulated trail building in Honoli'i gulch, including possible public health safety and welfare concerns.

Staff would like to note that we support recreation and the development and maintenance of visitor accommodations. However, we feel that the landowner and Kapohokine Adventures have tried to circumvent our conservation district rules and regulations by constructing improvements without our approval. While our recommendation in this report is not the maximum penalty, we believe that it is reasonable given the circumstances.

Administrative Costs:

Staff notes the landowner should pay for the following divisional resources used: 1) Office of Conservation and Coastal Lands (OCCL); and 2) DOCARE Hawaii Branch. DOCARE's staff calculated administrative costs total is \$500.00, and OCCL's staff calculated administrative costs total is \$1,000.00. Staff has calculated the total amount to be **\$1,500.00**.

This submittal and notice of the Board's meeting will be sent to Mr. Morrow and Ms. Prekaski.

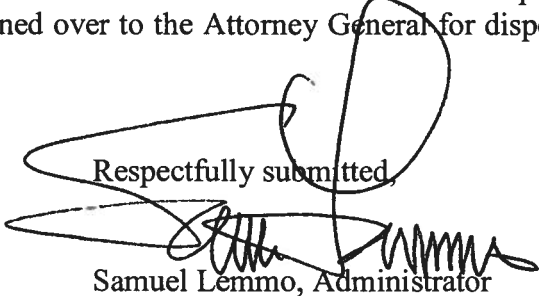
AS SUCH, STAFF RECOMMENDS:

That, pursuant to Chapter 183C-7, Hawai'i Revised Statutes (HRS), the Board finds Mr. Gary Marrow, of Kapohokine Adventures, and Ms. Teresa Prekaski, in violation of HRS, Chapter 183C-7 and HAR, Chapter 13-5-6, and subject to the following:

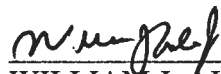
1. That Mr. Marrow and Ms. Prekaski violated the provisions of Chapter 183C-7, Hawai'i Revised Statutes (HRS), and Chapter 13-5-6, Hawai'i Administrative Rules (HAR), by allowing or constructing a trail and conducting a commercial tour business in the Limited Subzone without a Conservation District Use Permit.
2. That Mr. Marrow and Ms. Prekaski are fined a minimum of **\$15,000**;
3. That Mr. Marrow and Ms. Prekaski are fined **\$1,500.00** for administrative costs;
4. That Mr. Marrow and Ms. Prekaski shall pay all fines within sixty (60) days of the date of the Board's action on this matter;

5. That Mr. Marrow and Ms. Prekaski shall either remediate the trail and restore the land to its original state, or apply for an after-the-fact Conservation District Use Permit (CDUP) for the trail and a commercial recreational use within one hundred and twenty (120) days of the Board's action on this matter. If remediation is chosen instead of an after-the-fact permit, or the Board orders remediation, a plan shall be submitted and approved by the Department prior to any remediation work being conducted;
6. That if Mr. Marrow or Ms. Prekaski apply for a CDUP, and if the permit is denied, the trail will need to be removed and the area restored to its natural state in accordance with a remediation plan approved by the Department;
7. That no further work or commercial uses shall occur on the land within the Conservation District without the approval of the Department or Board of Land and Natural Resources. Mr. Marrow and Ms. Prekaski shall certify that use of the trail has ceased, except for purposes of remediation. If further work, including commercial tours continues in the Conservation District portions of parcels without approval, they will be fined an additional \$15,000 a day; and
8. That in the event of failure of Mr. Marrow and Ms. Prekaski to comply with any order herein, the matter shall be turned over to the Attorney General for disposition, including all administrative costs.

Respectfully submitted,


Samuel Lemmo, Administrator
Office of Conservation and Coastal Lands

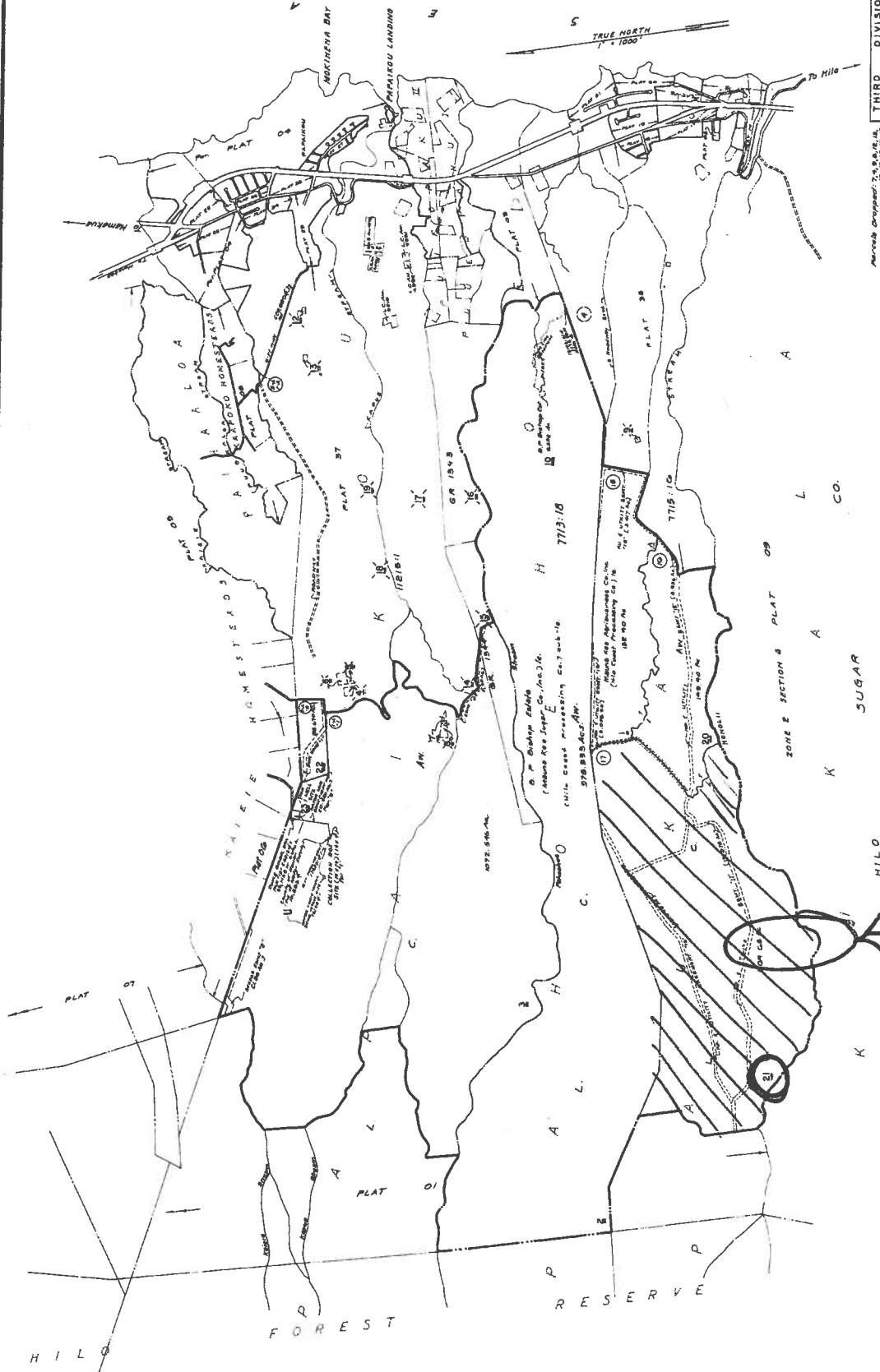
Approved for submittal:



WILLIAM J. AILA, Chairperson
Board of Land and Natural Resources



EXHIBIT 1



THIRD	DIVISION
2	7
ZONE	PLAT
2	7
CONTAINING	PARCELS
2	7
SCALE 1:1000	

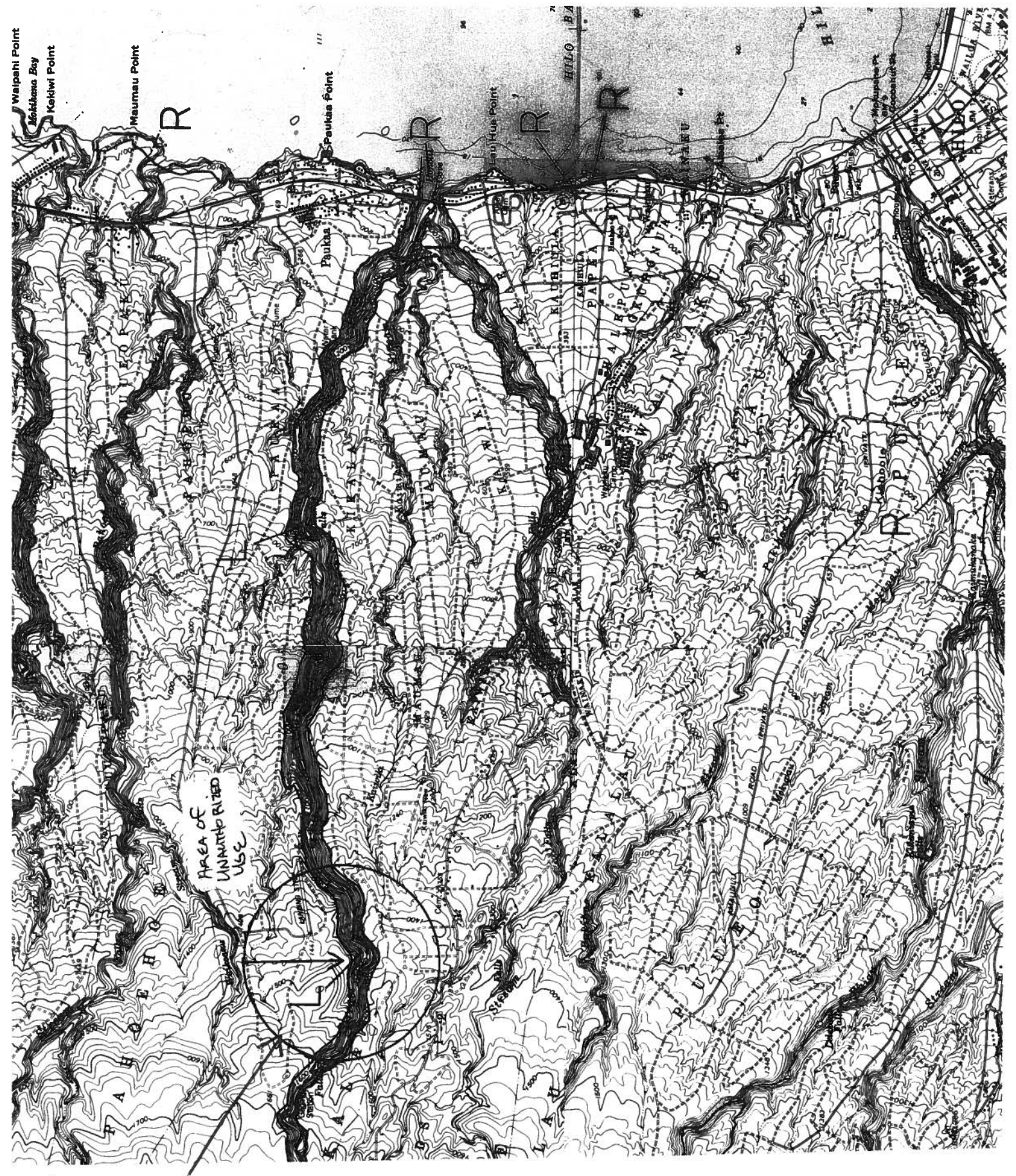
ADVANCE SHEET
SUBJECT TO CHANGE

PRINTED

Location

For PAUKAA - PAPAIAKOU, For Orange Sugar Co., S. Hilo, Hawaii

Drawn by: 2/15
G.B. Aug. 1934 & H.A. Apr. 1935
Source: Survey Dept.



Honolulu Gulch
LIMITED SUBZONE

EXHIBIT 3

TO: Office of Conservation (DLNR)

FROM: Teresa Prekaski
P.O. BOX 638
Pepeekeo, HI 96783

RECEIVED
CONSERVATION
NATURAL LANDS

2010 OCT 11 A 9:34

DATE 10/05/10

DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

REF: Limited conservation request. TMK 3-2-7-2-21. Honolii Stream.

Aloha,

I am having huge problems with wild pigs living in the gulch on my property. I am farming sweet potato on the property and the pigs are creating a lot of problems. It has also become impossible to get down to the river due to the invasive species that have taken over. I would like to create a walking trail for access to this portion of my property from the top of the gulch to the river. I would like to start removing the invasive plants as they have created an amazing and thick habitat for the pigs. I would like to remove the Kahili Ginger, Staghorn ferns and Guava trees that are choking the forest and native plants. The ferns have completely choked out most of the endemic plants already. I am planning on planting new native plants and trees to take over what has been removed. I have attached a photo of the top of the property with a silver mark showing where the trail will go. This is the easiest location. I use to have trails here years ago but it has since grown over. The trail will be around 4 feet wide and about 150 feet long. Please let me know if this ok. I would like to get started and get rid of these pigs and rejuvenate the forest. Mahalo for your time!

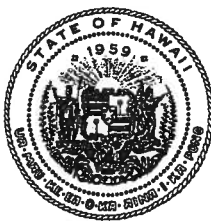
Aloha and Mahalo

 10/05/10

Teresa Prekaski DATE

EXHIBIT 4

LINDA LINGLE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
OFFICE OF CONSERVATION AND COASTAL LANDS
POST OFFICE BOX 621
HONOLULU, HAWAII 96809

LAURA H. THIELEN
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

PAUL J. CONRY
ACTING FIRST DEPUTY

LENORE N. OHYE
ACTING DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

REF:OCCL:AB

Correspondence: HA-11-75

Teresa Prekaski
P.O. Box 638
Pepe'ekeo, Hawai'i 96783

NOV 11 2010

SUBJECT: Plant Removal and Walking Trail, Located at Honoli'i Stream, South Hilo, Hawai'i, TMK: (3) 2-7-002:021

Dear Ms. Prekaski:

The Department of Land and Natural Resources, Office of Conservation and Coastal Lands (OCCL) has reviewed your letter dated October 5, 2010 regarding plant removal and walking trail, located at Honoli'i Stream, South Hilo, Hawai'i, TMK: (3) 2-7-002:021.

According to your information, you would like to create a 4-foot wide, 150-foot long walking trail for access on the property from the top of the gulch to the river. In addition, you would like to remove invasive plants that have created a thick habitat for wild pigs. These plants include: Kahili ginger, Staghorn ferns, and Guava trees. You plan to plant new native plants and trees in place of the invasives removed.

According to OCCL records, the subject property appears to be located in the State Conservation District, Limited Subzone. The proposed project may be an identified land use within the Limited Subzone pursuant to Hawai'i Administrative Rules (HAR) §13-5-23, *Identified land uses in the limited subzone*, L-4, LANDSCAPING (C-2) or (D-1). This action would require a Conservation District Use Application for either a Departmental or a Board Permit. This could also require the filing of an environmental assessment (EA).

In order for OCCL to determine which type of the permit the proposed project would require and whether an EA would be required, we request additional information from you regarding the project. How much area is proposed for the plant removal? What plants will be re-planted after the removal? What material will the walking trail be constructed of?

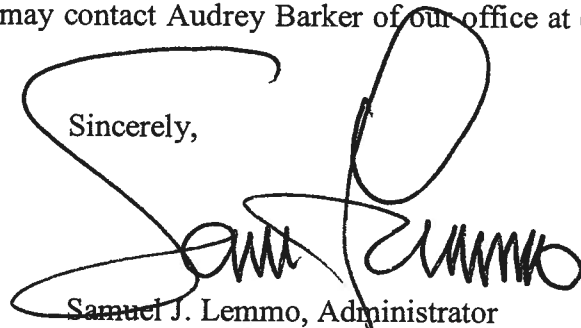
The Conservation District Rules under HAR, Chapter 13-5, which details identified land uses in the Conservation District, and the associated permitting process, may be found on our website at www.hawaii.gov/dlnr/occl.

EXHIBIT 5

For information regarding environmental assessments, you may contact the State Office of Environmental Quality Control (OEQC) at (808) 586-4185 or visit their website at <http://hawaii.gov/health/environmental/oeqc/index.html/>.

Please provide OCCL with the requested information regarding your project. Should you have any questions about this correspondence, you may contact Audrey Barker of our office at (808) 587-0377 or audrey.t.barker@hawaii.gov.

Sincerely,

A large, stylized handwritten signature in black ink, appearing to read 'Samuel J. Lemmo'.

Samuel J. Lemmo, Administrator
Office of Conservation and Coastal Lands

c: Chairperson
HDLO/DOFAW
Hawai'i Planning Department

EXHIBIT 5

HA-11-75

TO: Office of Conservation (DLNR)

DIVISION
OF CONSERVATION
NATURAL LANDS

FROM: Teresa Prekaski
P.O. BOX 638
Pepeekeo, HI 96783

2010 NOV 18 A 11: 55

DATE 11/15/10

DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

REF: Limited conservation request. TMK 3-2-7-2-21. Honolii Stream.

Aloha,

Thank you for your response. The trail is actually still in pretty good shape. We just need to remove some Guava trees and some fern that have grown up out of the trail. It looks like the most that would be removed would be about 600 square feet. It would just be on the trail and a small viewing spot from the top cliff line to view the falls from above. The trail is smooth all the way down except for about 10 steps that are in different locations along the trail. I am going to use the guava tree trunks removed to repair and put in a couple more steps on the trail that have rotted. The trail will be sprinkled with cinder to prevent slipping in the mud. We are growing 100's of Koa keiki to plant in the place of the guava trees that we want to remove. I'm attaching a picture below of the koa we have started growing. Thank you for your time and if you need any more information please let me know.

Aloha and Mahalo

Teresa Prekaski 11/15/10
Teresa Prekaski DATE

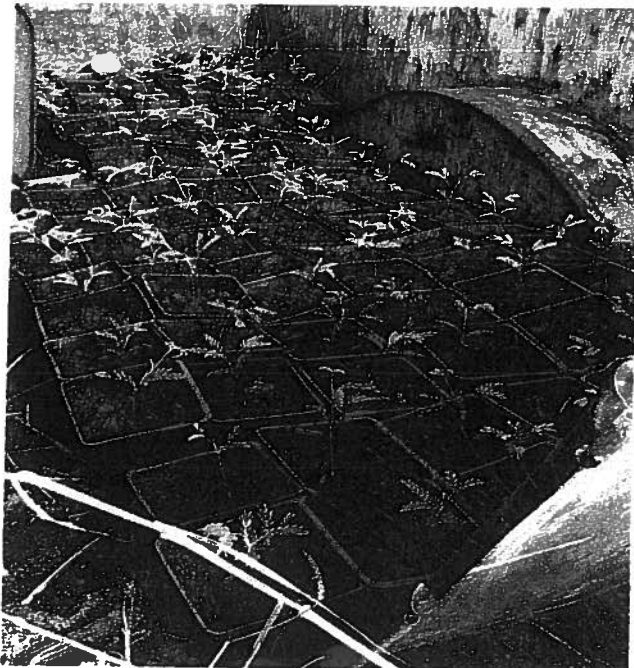
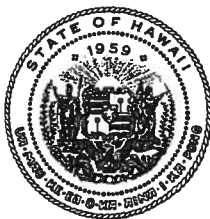


EXHIBIT 6

LINDA LINGLE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
OFFICE OF CONSERVATION AND COASTAL LANDS
POST OFFICE BOX 621
HONOLULU, HAWAII 96809

LAURA H. THIELEN
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KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

REF:OCCL:AB

Correspondence: HA-11-75

Teresa Prekaski
P.O. Box 638
Pepe'ekeo, Hawai'i 96783

NOV 24 2010

SUBJECT: Plant Removal and Walking Trail, Located at Honoli'i Stream, South Hilo, Hawai'i, TMK: (3) 2-7-002:021

Dear Ms. Prekaski:

The Department of Land and Natural Resources, Office of Conservation and Coastal Lands (OCCL) has reviewed your letter dated November 15, 2010 regarding plant removal and walking trail, located at Honoli'i Stream, South Hilo, Hawai'i, TMK: (3) 2-7-002:021.

According to your information, you would like to remove approximately 600 square feet of guava trees and ferns, and replace the area with Koa keiki. You plan to use the removed guava tree trunks for a trail and a small viewing spot from the top cliff line to view the falls from above.

According to OCCL records, the subject property appears to be located in the State Conservation District, Limited Subzone. The proposed project is an identified land use within the Conservation District pursuant to Hawai'i Administrative Rules (HAR) §13-5-22, *Identified land uses in the protective subzone, P-4, LANDSCAPING (C-1) Landscaping, defined as alteration (including clearing) of plant cover. Such alteration shall be limited to plant materials that are endemic or indigenous and similar in character and appearance to existing vegetation in the surrounding area. Natural vegetative plant cover, where disturbed, shall be restored or replaced with endemic or indigenous planting. The introduction of alien plant species is prohibited in the protective subzone. This action would require a Conservation District Use Application (CDUA) for a Departmental Permit.*

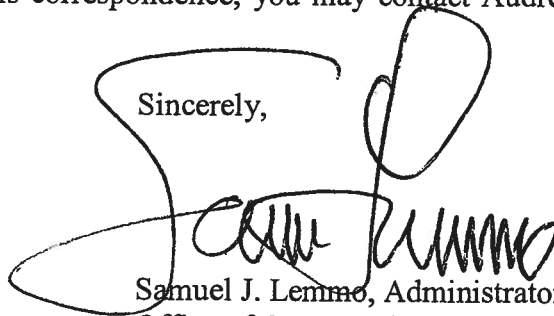
Staff has determined that the proposed project is minor in scope and may be considered an exempt action under HAR Section 11-200-8(a)(4), *Minor alterations in the conditions of land, water, or vegetation.*

A CDUA form can be downloaded from our website at www.hawaii.gov/dlnr/occl. You may also make an appointment to view example CDUAs at our office in Honolulu.

EXHIBIT 7

Should you have any questions about this correspondence, you may contact Audrey Barker of our office at (808) 587-0377.

Sincerely,

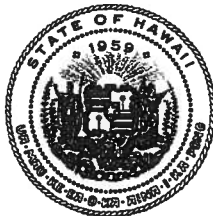
A handwritten signature in black ink, appearing to read 'Samuel J. Lemmo', is written over a large, loopy, handwritten 'S' that also serves as a closing flourish for the letter.

Samuel J. Lemmo, Administrator
Office of Conservation and Coastal Lands

c: Chairperson
HDLO/DOFAW
Hawai'i Planning Department

EXHIBIT 7

NEIL ABERCROMBIE
GOVERNOR OF HAWAII



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

WILLIAM J. AILA, JR.
INTERIM CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

GUY H. KAULUKUKUI
INTERIM FIRST DEPUTY

WILLIAM M. TAM
INTERIM DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
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CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAOHOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

NOTICE OF ALLEGED VIOLATION & ORDER

ENF: HA 11-09

DEC 30 2010

CERTIFIED MAIL RETURN RECEIPT

7007 1490 0001 4981 1107

Teresa Prekaski

P.O. Box 638

Pepe'ekeo, Hawai'i 96783

SUBJECT: Alleged Violation in the Conservation District Consisting of the Construction of a Walking Trail (Involving Excavation and Clearing), Construction of Stairs and Walkway Platforms to Support Commercial Tour Operations, Located at Honoli'i Stream, South Hilo, Hawai'i, TMK: (3) 2-7-002:021

Dear Ms. Prekaski:

NOTICE IS HEREBY GIVEN that you may be in violation of Hawaii Administrative Rules (HAR) Title 13, Chapter 5, entitled "Conservation District" providing for land use within the Conservation District, enacted pursuant to Chapter 183C, Hawaii Revised Statutes (HRS). According to our records, the subject area (gulch area in which alleged unpermitted work has been reported) appears to be located in the State Conservation District, Limited Subzone. Our office has not authorized any such work in this area.

The Department of Land and Natural Resources intends to conduct a detailed investigation into this matter. If necessary, the Department may bring this matter to the attention of the Board of Land and Natural Resources (BLNR) as an alleged violation pursuant to Hawai'i Revised Statute Chapter 183C-7, and rules promulgated pursuant to this chapter (Title 13-5, Hawaii Administrative Rules). Should you fail to cease such activity immediately, you may be subject to fines up to \$15,000 per day pursuant to Chapter 13-5, HAR, in addition to administrative costs incurred by the Department.

Should you have any questions regarding this matter, contact Sam Lemmo of our Office of Conservation and Coastal Lands at (808) 587-0377

Sincerely,

A handwritten signature in black ink, appearing to read "William J. Aila, Jr.", is written over a horizontal line.

William J. Aila, Jr., Chairperson

C: Gary Marrow
DOCARE (Hilo)

EXHIBIT

A handwritten number "8" in black ink, written in a stylized, cursive-like font.

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EXHIBIT 9

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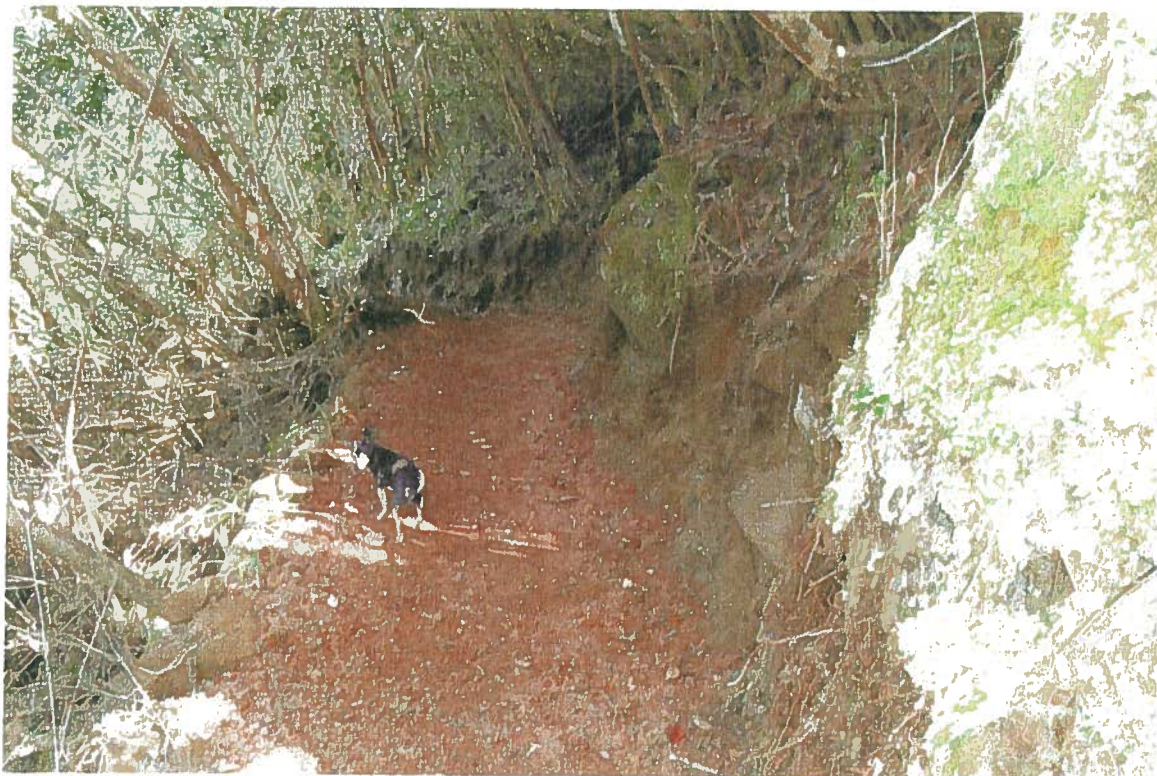


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EXHIBIT 9





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9

An aerial photograph of a landscape. A river flows from the top right towards the bottom right. On the left side of the river, there is a large, irregularly shaped white object, possibly a building or a cleared area. The surrounding terrain is green and textured, likely vegetation. The image is grainy and has a high-contrast appearance.

EXHIBIT 9

**CONSERVATION DISTRICT VIOLATION PENALTIES SCHEDULE
GUIDELINES AND ASSESSMENT OF DAMAGES TO PUBLIC LAND OR
NATURAL RESOURCES**

September 2009

Relating to penalties for violations within the Conservation District

Act 217

EXHIBIT 10

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APPENDIX C: REFERENCES

APPENDIX D: DAMAGES EXAMPLES

APPENDIX E: PENALTY CALCULATION WORKSHEET

1 INTRODUCTION

Hawaii Revised Statutes (HRS) §183C-7 was amended on July 7, 2008 to increase the maximum penalty for a Conservation District violation to up to \$15,000 per violation, in addition to administrative costs, costs associated with land or habitat restoration, and damages to public land or natural resources, or any combination thereof.

This document, *Conservation District Violation Penalties Schedule Guidelines and Assessment of Damages to Public Land and Natural Resources* is intended to provide the Office of Conservation and Coastal Lands (OCCL) with a framework to systematically carry out its enforcement powers, in the determination and adjudication of civil and administrative penalties. These guidelines are to be used for internal staff guidance, and should be periodically reviewed to determine their effectiveness, and whether refinements are needed. These guidelines are consistent with HAR §13-1, Subchapter 7, Civil Resource Violation System (CRVS).

2 CONSERVATION DISTRICT VIOLATION PENALTIES SCHEDULE GUIDELINES

The charging and collecting of penalties is an enforcement tool that may be used to ensure future compliance by the responsible party and others similarly situated. The penalty amount(s) shall be enough to ensure immediate compliance with HAR §13-5 and HRS §183C, and cessation of illegal activities. Penalties will be assessed for each action committed by an individual(s) that conducts an unauthorized land use and that impairs or destroys natural resources protected under Chapter §183C, HRS.

The Staff will treat each case individually when assigning conservation district penalties using the following framework, and additional considerations and factors for upward or downward adjustments. The staff of the OCCL (Staff) will use these penalty schedule guidelines to issue violation notices and to make recommendations to the Board of Land

and Natural Resources (Board), Chairperson of the Board of Land and Natural Resources (Chairperson), or Presiding Officer, whom may ultimately adjudicate the Conservation District penalties. These guidelines presume that all cases in which a violation has occurred, the Chairperson, Board, or Presiding Officer may also assess administrative costs, damages to public land or natural resources, and costs associated with land or habitat restoration.

2.1 PENALTY CALCULATION

The penalty range for these actions will be substantially determined based on the type of permit that would have been required if the individual(s) had applied to the Department of Land and Natural Resources (Department) or Board for pre-authorization to conduct the identified use, under Hawaii Administrative Rules (HAR) §13-5-22, 23, 24, 25. Assessing the penalties according to the Conservation District permit type accounts for the level of review or scrutiny the unauthorized use would have received by the Department or Board in order to avoid damage to the natural resource. This graduated permit review framework corresponds to the level of actual or potential “harm to the resource”¹ caused by the violation.

Once the baseline for the penalty range has been established according the required permit, the penalty may be adjusted appropriately upward or downward according to the “harm to resource” caused or potentially caused by the violator’s action and additional considerations and factors (See 2.1.4),² within the assigned penalty range. Where Staff was unable to associate the unauthorized use with a typical land use identified in HAR §13-5, Staff may try to associate the action with the most similar identified land use in HAR §13-5, or according to the “harm to the resource” caused by the violation. Table 1

¹ “Harm to resource” is an actual or potential impact, whether direct or indirect, short or long term, impact on a natural, cultural or social resource, which is expected to occur as a result of unauthorized acts of construction, shoreline alteration, or landscape alteration (See Appendix B: Definitions) *Adapted from Florida Department of Environmental Protection 2000 Administrative Fines and Damage Liability, Ch. 62B-54.*

² Penalty amounts may be adjusted up or down, based on additional considerations, such as the actual extent of the direct damages, significance of any offsite indirect impacts, environmental record of the violator, responsiveness of violator, etc. (See 2.1.4 Additional Considerations and Factors).

was created to demonstrate the penalty ranges for the type of required permit and “harm to resource” (See 2.1.1 or Appendix A).

The first two of the following sections explain the identified and non-identified land use framework. The next four sections: Tree Removal, Additional Considerations and Factors, Continuing Violations and Permit Non-Compliance, and In-Kind Penalties, provide guidance for the upward or downward adjustment of penalties based on the initial framework discussed in Section 2.1.1, Identified land use penalties.

2.1.1 Identified Land Use Penalties

The violation penalty range associated with each required permit will be assessed in accordance with the following harm to resource indices in this graduated framework.

Table 1. Penalty Guideline Framework

<u>Harm to resource or potential for harm to resource</u>	<u>Identified land use permit beginning with the letter</u>	<u>Penalty Range</u>
Major	D (Board)	\$10,000-\$15,000
Moderate	C (Departmental)	\$2,000-\$10,000
Minor	B (Site Plan)	\$1,000-\$2,000
Very Minor	(B) (Site Plan)	Up to \$1,000

Major Harm to the Resource/ Board Permit (D)

Violations identified with the required permit prefix (D) may incur a penalty in the range of \$10,000 - \$15,000 as a Board permit would have been required to minimize the possibility of causing “major harm to the resource.” Examples of “major harm(s) to the resource” may include actions that cause substantial adverse impact to existing natural resources within the surrounding area, community, ecosystem or region, or damage to the existing physical and environmental aspects of the land, such as natural beauty and open space characteristics. Such actions may include, but are not limited to, unauthorized single-family residences or unauthorized structures, grading or alteration of topographic features, aquaculture, major marine construction or dredging, unauthorized shoreline structures, major projects of any kind, mining and extraction, etc.

Moderate Harm to the Resource/Departmental Permit (C)

Violations identified with the required permit prefix (C) may incur a penalty in the range of \$2,000-\$10,000, as a Departmental permit would have been required, due to the possibility of causing “moderate harm to the resource.” Examples of “moderate harm(s) to the resource” may be adverse impacts that degrade water resources, degrade native ecosystems and habitats, and/or alter the structure or function of a terrestrial, littoral or marine ecosystem. Such actions may include, but are not limited to, unauthorized landscaping causing ground disturbance, unauthorized alteration, renovation or demolition of existing structures or facilities, such as buildings and shoreline structures, maintenance dredging, agriculture, and animal husbandry, etc.

Minor Harm to the Resource/Site Plan Approval (B) Permit

Violations identified with the required permit prefix (B) may incur penalties as a site plan approval would have been required to assure that “minor harm(s) to the resource” are minimized. “Minor harm(s) to the resource” may incur a penalty of \$1,000-\$2,000 and could be actions causing limited to short-term direct impacts including, but not limited to, small-scaled construction, construction of accessory structures, installation of temporary or minor shoreline activities or similar uses.

Very Minor Harm to the Resource/(B) Permit

In instances in which a permit with the B prefix should have been sought but are considered to have only caused “very minor harm(s) to resource” a penalty of up to \$1,000 may be incurred. These “very minor harm(s) to the resource” could be actions in which the impact on the water resource or terrestrial, littoral or marine ecosystem was temporary or insignificant, and was not of a substantial nature either individually or cumulatively.

2.1.2 Non- Identified Land Use Penalties

Violations in which an unauthorized use is not identified in HAR §13-5-22, 23, 24, 25, Staff may try to associate the action with the most similar identified land use in HAR

§13-5 or according to the “harm to the resource” caused by the violation. Refer to the above section, *Identified Land Use Penalties*, for the most similar required permit prefix. To categorize the violation as a “harm to resource” when no similar use is identified in HAR §13-5, Staff will refer to Table 1 and the definitions of the four violation types of “harm to resource” (See Appendix B: Definitions).

2.1.3 Tree Removal

Violation penalties for the removal of any federal or state listed threatened, endangered, or commercially valuable tree may incur a fine of up to \$15,000 per tree. Removal of any native tree may incur a fine of up to \$1,000 per tree. The removal of any invasive tree shall be considered as removal/clearing of vegetation.

The Board, Department, or Presiding Officer also has the option of considering the removal of more than one tree as a single violation, similar to the removal/clearing of vegetation.³ If violation is considered as one violation, a fine amount of up to \$15,000 may be incurred, utilizing the guidelines for Major, Moderate, Minor, and Very Minor outlined in this schedule. However, the removal of any federally or state listed threatened or endangered tree shall be considered on a one violation per tree basis, with a maximum penalty of up to \$15,000 per tree.

2.1.4 Vegetation Removal/Vegetation Clearing

Past Staff recommendations and Board decisions have treated some cases of tree or removal as one citation of vegetation clearing/vegetation removal, this practice may be continued in violations resulting in minor or very minor harm to the resource. In accordance with the identified land uses within HAR §13-5 the assessment of vegetation removal has been based on a single citation of removal/clearing determined by the square footage of vegetation removed (See Table 3 Vegetation Removal). However, the

³ While Staff and Board decisions in MA-01-09, OA-05-40 and HA-06-08 have treated the removal of non-native, invasive, or noxious trees as one citation of "clearing" with mandatory remediation plans.

Department may see fit to assess the removal/clearing of threatened, endangered, or commercially valuable plants similar to the modified tree removal framework and may be penalized on an individual plant basis of up to \$15,000 per plant.

Table 3. Vegetation Removal

Action	Comparable Harm to Resource	Penalty Range
Removal of more than 10,000 sq. ft.	Major	\$10,000-\$15,000
Removal of Vegetation or of 2,000-10,000 sq. ft of vegetation	Moderate	\$2,000-\$10,000
Removal of less than 2,000 sq. ft. vegetation	Minor	\$1,000-\$2,000
Clearing of Invasive or noxious vegetation	Very Minor	Up to \$1,000 ⁴

Note: The clearing of threatened, endangered or commercially valuable plants will be addressed on a case-by-case basis, but depending on the importance of the species may incur a penalty of up to \$15,000 per plant. According to Table 2, the clearing of vegetation may incur a penalty of up to \$1/ sq.ft., as clearing 10,000 sq.ft. Staff could assess a penalty of \$10,000.

2.1.5 Additional Considerations and Factors

After Staff applies the Conservation District violation graduated penalty framework to identify the violation penalty range (1, 2, and 3 found above), the Staff may incorporate several considerations into the final assessed conservation district penalty including but not limited to, those factors identified in HAR §13-1-70 Administrative Sanctions Schedule; Factors to be Considered.

2.1.6 Continuing Violations and Permit Non-Compliance

Each day during which a party continues to work or otherwise continues to violate conservation district laws, and after the Department has informed the violator of the offense by verbal or written notification, the party may be penalized up to \$15,000 per day (penalties for every day illegal actions continue) by the Department for each separate offense.

⁴ Provided the harm to the resource and offsite damage were minimal.

Violation of existing approved Conservation District Use Permit (CDUP) conditions will be assessed on a case-by-case basis. Existing permit violations, in which deadlines are not met, may be individually assessed by the Staff as to prior violator conduct, knowledge, and compliance. Violation of permit conditions involving initiation and/or completion of project construction, notification of start and completion dates, failure to file legal documents, etc., may be considered very minor within the existing framework, although it should be noted that such actions may result in permit revocation. Failure to perform proper cultural, archeological, or environmental impact studies or failure to implement proper best management practices as identified in the standard permit conditions may be assessed more severely by Staff, as a moderate or major harm to the resource, due to the potential of greater adverse impacts to natural resources from the violator's failure to comply with the permit conditions, may have occurred.

2.1.7 In-Kind Penalties

Once the penalty amount has been established through the framework above, the Department may determine that the full payment or some portion of the penalty may be paid as an in-kind penalty project.⁵ This would not serve as a way to avoid payment but as a way to reduce the cash amount owed while allowing the Department to consistently enforce its rules. The in-kind penalty project is not designed to credit the violator for restoration or remediation efforts that may be already required, but to offset a portion of the cash penalty assessed. The in-kind penalty should be enough to ensure future compliance with HAR §13-5 and HRS §183C, by the violator and to deter other potential violators from non-compliance.

In-kind penalties will only be considered if (1) the responsible party is a government entity, such as a federal agency, state agency, county agency, city agency, university, or school board, or if (2) the responsible party is a private party proposing an environmental

⁵ In-Kind Penalty framework has been adapted from Florida Department of Environmental Protection. 2007. Program Directive 923, Settlement guidelines for civil and administrative penalties.

restoration, enhancement, information, or education project. In-kind penalties are limited to the following specific options:

- a. **Material and/or labor support for environmental enhancement or restoration projects.** The Department will give preference to in-kind projects benefiting proposed government-sponsored environmental projects. For shoreline violations, this may include state beach nourishment projects and dune restoration projects.
- b. **Environmental Information and Environmental Education projects.** Any information or education project proposed must demonstrate how the information or education project will directly enhance the Department's, and preferably the OCCL's, mission to protect and conserve Hawaii's Conservation District Lands.
- c. **Capital or Facility improvements.** Any capital or facility improvement project proposed must demonstrate how the improvement will directly enhance the Department's and/or public's use, access, or ecological value of the conservation property.
- d. **Property.** A responsible party may propose to donate land to the department as an in-kind penalty. Donations will be handled by the Department's Legacy Lands program or similar program.

2.1.8 Penalty Adjudication

Violation penalties may be adjudicated similarly to the harm to resource indices in the penalty guideline framework.

Comparable Harm to Resource	Identified land use permit and Penalty Range	Penalty Adjudicator
Major	\$10,000-\$15,000	Board
Moderate	\$2,000-\$10,000	Board
Minor	\$1,000-\$2,000	Chairperson or Presiding Officer
Very Minor	up to \$1,000	Chairperson or Presiding Officer

Major and Moderate Harm to the Resource

The Board may adjudicate penalties to violations categorized as causing or potentially causing major or moderate harm(s) to the resource. The Board may also adjudicate cases in which repeat violations, repeat violators, or egregious behavior were involved, or moderate to significant actual harm to the resource occurred. The Board may also adjudicate the payment of part or all, of the penalty as part of an In-kind penalty.

Minor and Very Minor Harm to the Resource

The Board may delegate to the Chairperson or a Presiding Officer the power to render a final decision in minor and very minor conservation district violations in order to provide expeditious processing and cost effective resolution. The Chairperson or appointed Presiding Officer may adjudicate penalties to minor and very minor violations characterized by inadvertent or unintentional violations and those violations which caused minor or very minor harm to the resource.

3 ASSESSMENT OF DAMAGES TO PUBLIC LAND OR NATURAL RESOURCES

Penalties to recoup damages to public lands or natural resources for the purposes of enforcement and remediation may be assessed in addition to Conservation District violation penalties assessed by the aforementioned guidelines. The assessed total value of the initial and interim natural resource(s) damaged or lost (compensatory damages) and the cost of restoration or replacement of the damaged natural resource(s) (primary restoration cost) along with any other appropriate factors, including those named in HAR §13-1-70, may be adjudicated by the Board. The total value may be estimated on a per annum basis, and then may be used to calculate the net present value of the initial and interim loss of natural resource benefits, until the ecosystem structure, function, and/or services are restored.

The cost of a full-scale damage assessment by the Department would be an administrative cost, which could be recouped by the Board from the landowner or offender pursuant §HRS 183C-7. In some cases, the damage to public lands or natural resources may occur on more than one ecosystem or habitat type, (e.g., sandy beaches, seagrass beds, and coral reefs). In such instances, damages for all impacted systems will be handled cumulatively.

Since all the ecosystem services provided by the ecosystem in question cannot be quantified (e.g., the aesthetic value), the values obtained are lower bound estimates, and may be applied to systems similar to the referenced ecosystem using the benefit transfer method. These valuations, to account for the loss of ecosystem services and the cost to restore them, may be applied to Hawaiian ecosystems on public lands: such as Koa and Ohia forests, coral reefs, seagrass beds, wetlands, dune and beach ecosystems, and other important Hawaiian ecosystems.

While each case is unique and individual in nature, the Department may not be able to conduct detailed damage assessments in each case, and may refer to past precedent,

economic ecosystem valuations, and other published environmental valuations to estimate and assess damages on smaller scales (for valuations and publication examples see Appendix C: References and Appendix D: Damages Examples). Using the benefit transfer method to apply past precedents and published valuations in some situations would allow the Department to focus its administrative duties and time on remediation and restoration efforts. However, as ecological valuation and research continue, more comprehensive estimates may be produced and utilized.

The Board may allow restoration activities and damage penalties to be conducted and/or applied to a site different from the location of the damaged area where similar physical, biological and /or cultural functions exist. These assessed damages are independent of other, city, county, state and federal regulatory decisions and adjudications. Thus, the monetary remedies provided in HRS §183C-7 are cumulative and in addition to any other remedies allowed by law.

3.1 PRIMARY RESTORATION DAMAGES

The cost of land or habitat restoration or replacement, the cost of site monitoring, and site management may be assessed and charged as primary restoration damages. Restoration efforts will aim to return the damaged ecosystem to a similar ecological structure and function that existed prior to the violation. In cases in which the damaged ecosystem was predominately composed of non-native species, restoration efforts must re-vegetate Conservation District land and public lands with non-invasive species, preferably native and endemic species when possible. The use of native and endemic species may thus result in the restoration of ecological structure and function critical for the survival of endemic Hawaiian species.

Returning the damaged and or severely degraded site to a condition similar to or better than its previous ecological structure and function (e.g., a terrestrial system such as a Koa (*Acacia koa*) forest) would include: (1) calculating the level of ecosystem services to be restored from carbon sequestration, climate regulation, nutrient cycling, air and water purification, erosion control, plant and/or wildlife habitat, and any other services which

may be valued; (2) purchase, production and out-planting of Koa seedlings; and (3) monitoring, maintenance, and management for the time period of mature growth of ~40-60 years, to achieve mature canopy structure, native under-story, and an acceptable level of lost ecosystem structure, function and/or services restored.

3.2 COMPENSATORY DAMAGE CALCULATION

Compensatory damages to public lands or natural resources may be assessed and charged to the violator to compensate for ecosystem damage and lost initial and interim ecosystem services to the public. All Divisions of the Department may coordinate their resources and efforts along with existing ecosystem valuations and publications (See Appendix C and D for examples) to derive the estimated total value of the natural resource damaged until the ecosystem structure, function, and services are estimated to be recovered.

The total value of the natural resource that is lost or damaged may include the initial and interim values of the ecosystem services provided by the natural resource or habitat, and the social-economic value of the degraded site, until the ecosystem structure, function, and/or services are restored. Assessing the damages to the resource could include: estimating the loss of ecosystem services of carbon sequestration, climate regulation, nutrient cycling, plant and/or wildlife habitat, biodiversity, air and water purification, erosion control, coastal protection, the loss of benefits to tourism, fisheries, society, cultural inspiration and practices, and any other services which may be valued.

These natural resource damages may be assessed using economic valuation techniques to estimate the total value(s) of the natural resource(s) damaged on a per area basis, including: total ecosystem service value, total annual benefits, the market value of the natural resource, or any other factor deemed appropriate. The total value of the present and interim natural resource damage may be estimated by calculating the net present value of these lost benefits, values and services. The net present value may be calculated using a discount rate to scale the present and future costs to the public, of the interim losses of ecosystem services over the restoration time. The restoration time may be

estimated as the number of years for the damaged natural resource or ecosystem to reach maturity and/or the ecosystem structure and function to be restored similar to the pre-violation state. The discount of future losses and accrued benefits may be used in the valuation of mitigation efforts performed by the violator. For example the restoration conducted immediately after damage occurred may be calculated to have a higher present benefit worth than the benefit of restoration activities undertaken a year or two later.

In other instances, a habitat equivalency analysis (HEA) or a resource equivalency analysis (REA) may be used to scale equivalent habitat or wildlife losses for estimating both ecosystem damage penalties and restoration efforts.

3.3 ADJUDICATION OF DAMAGES

The adjudication of primary restoration damages and compensatory damages will be adjudicated by the Board due to the complexity of the assessment process and to assure proper checks and balances, including adequate public notice and a public hearing.

In addition to the damages and penalty violations assessed, the Department is allowed to recoup all administrative costs associated with the alleged violation pursuant to HRS §183C-7(b). All penalties assessed will be in compliance with HRS §183C-7(c) and will not prohibit any person from exercising native Hawaiian gathering rights or traditional cultural practices.

APPENDIX A: GUIDELINE FRAMEWORK TABLES

Table 1. Penalty Guideline Framework

<u>Harm to resource or potential for harm to resource</u>	<u>Identified land use permit beginning with the letter</u>	<u>Penalty Range</u>
Major	D (Board)	\$10,000-\$15,000
Moderate	C (Departmental)	\$2,000-\$10,000
Minor	B (Site Plan)	\$1,000-\$2,000
Very Minor	(B) (Site Plan)	Up to \$1,000

Table 2. Vegetation Removal

Action	Comparable Harm to Resource	Penalty Range
Removal of more than 10,000 sq. ft.	Major	\$10,000-\$15,000
Removal of Vegetation or of 2,000-10,000 sq. ft of vegetation	Moderate	\$2,000-\$10,000
Removal of less than 2,000 sq. ft. vegetation	Minor	\$1,000-\$2,000
Clearing of Invasive or noxious vegetation	Very Minor	Up to \$1,000 ⁶

Note: According to Table 2, the clearing of vegetation may incur a penalty of up to \$1/ sq.ft., as clearing 10,000 sq.ft. Staff could assess a penalty of \$10,000. The clearing of threatened, endangered or commercially valuable plants, will be addressed on a case-by-case basis, but depending on the importance of the species may incur a penalty of up to \$15,000 per plant.

APPENDIX B: DEFINITIONS

Definitions:

- (1) “Baseline” means the original level of services provided by the damaged resource.
- (2) “Benefit Transfer Method” estimates economic values by transferring existing benefit estimates from studies already completed for another location or issue.⁷
- (3) “Board” means the Board of Land and Natural Resources.
- (4) “Board Permit” means a permit approved by the Board of Land and Natural Resources.
- (5) “Chairperson” means the chairperson of the board of land and natural resources
- (6) “Civil Resource Violations System” or “CRVS” means a system of administrative law proceedings as authorized under chapter 199D, HRS, and further prescribed in Subchapter 7, 13-1, HAR, for the purpose of processing civil resource violations.
- (7) “Compensatory Damages” means damages for compensation for the interim loss of ecosystem services to the public prior to full recovery.
- (8) “Contested Case” means a proceeding in which the legal rights, duties, or privileges of specific parties are required by law to be determined after an opportunity for an agency hearing.
- (9) “Department” means the Department of Land and Natural Resources.
- (10) “Departmental Permit” means a permit approved by the Chairperson.
- (11) “Discounting” means an economic procedure that weights past and future benefits or costs such that they are comparable with present benefits and costs.
- (12) “Ecosystem Services” means natural resources and ecosystem processes, which may be valued according to their benefits to humankind.

For example: carbon sequestration, climate regulation, nutrient cycling, plant and/or wildlife habitat, biodiversity, air and water purification, erosion control, coastal protection, the loss of benefits to tourism,

⁷ Ecosystem Valuations http://www.ecosystemvaluation.org/benefit_transfer.htm

recreation, scientific discovery, fisheries, society, cultural inspiration and practices, and any other services which may be valued.

(13) “Grossly negligent” violation means conscious and voluntary acts or omissions characterized by the failure to perform a manifest duty in reckless disregard of the consequences.⁸

(14) “Harm to resource” means an actual or potential impact, whether direct or indirect, short or long term, acting on a natural, cultural or social resource, which is expected to occur as a result of unauthorized acts of construction, shoreline alteration, or landscape alteration as is defined as follows:

(a) “Major Harm to resource” means a significant adverse impact(s), which can cause substantial adverse impact to existing natural resources within the surrounding area, community or region, or damage the existing physical and environmental aspects of the land, such as natural beauty and open space characteristics

(b) “Moderate Harm to Resource” means an adverse impact(s), which can degrade water resources, degrade native ecosystems and habitats, and/or reduce the structure or function of a terrestrial, littoral or marine system (but not to the extent of those previously defined as those in (a)).

(c) “Minor Harm to Resource” means limited to short-term direct impacts from small scaled construction or shoreline or vegetation alteration activities.

(d) “Very Minor Harm to Resource” means an action in which the impact on the water resource or terrestrial, littoral or marine ecosystem was insignificant, and was not of a substantial nature either individually or cumulatively.

For example, “major harm to the resource(s)” would be associated with a major land use violation that would have likely required a Board Permit, such as building a house, while a “minor harm to the resource(s)” may be

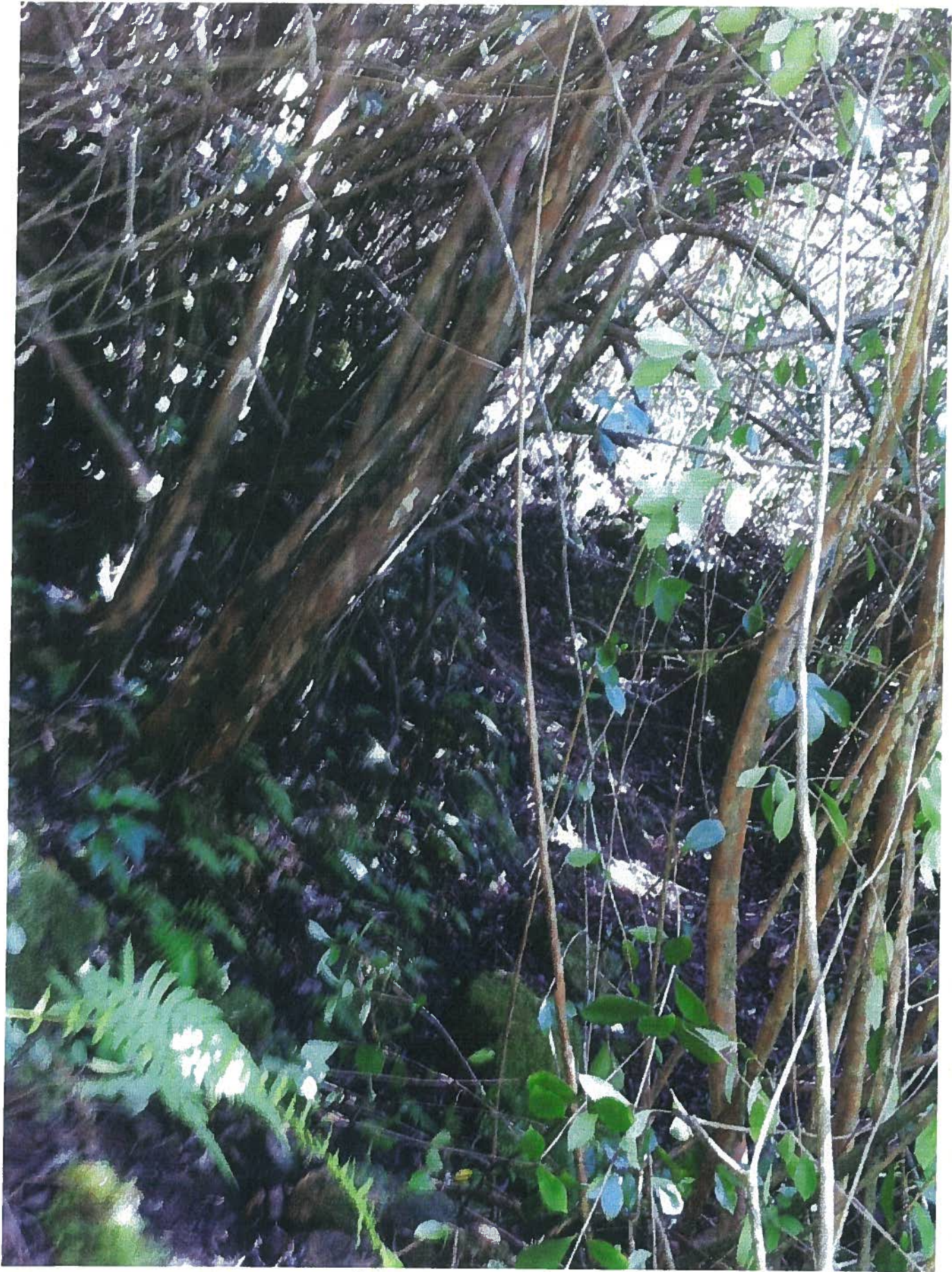
⁸ Definition adapted from Florida Department of Environmental Protection. 2000 Administrative Fines and Damage Liability, Ch. 62B-54.

associated with minor land uses requiring an administrative Site Plan Approval, for building a small accessory structure.

- (15) “Knowing” violation means an act or omission done with awareness of the nature of the conduct.
- (16) “Net Present Value” means the total present value (PV) of a time series of cash flows.
- (17) “OCCL Administrator” means the Administrator of the Office of Conservation and Coastal Lands.
- (18) “Party” means each person or agency named or admitted as a party.
- (19) “Person” means an appropriate individuals, partnership, corporation, association, or public or private organization of any character other than agencies.
- (20) “Presiding Officer” means the person conducting the hearing, which shall be the chairperson, or the chairperson’s designated representative.
- (21) “Primary Restoration Damages” means the costs to restore the damaged site to its prior baseline state.
- (22) “Site Plan” means a plan drawn to scale, showing the actual dimensions and shape of the property, the size and locations on the property of existing and proposed structures and open areas including vegetation and landscaping.
- (23) “Willful violation” means an act or omission which is voluntary, intentional and with the specific intent to do something the law forbids, or fail to do something the law requires to be done.



EXHIBIT 11



11





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